



PRELIMINARY BREATH TESTS

FC No.: 516

Date: 08-21-02

Contents:

- I. Purpose
- II. Arrest Procedures
- III. Preliminary Breath Test Procedures
- IV. Preliminary Breath Test Coordinator
- V. Calibration Tests
- VI. Issuance of PBTs**
- VII. Proponent Unit
- VIII. Cancellation

I. Purpose

The purpose of this directive is to establish policy and procedure for the use of preliminary breath testing equipment prior to the arrest of an individual who is suspected of driving or attempting to drive a motor vehicle while ***under the influence of/while impaired by*** alcohol or drugs. (CALEA 61.1.5.a)

II. Arrest Procedures (CALEA 61.1.11)

- A. Maryland's preliminary breath test law allows a police officer, who has reasonable grounds, to request an individual to submit to a preliminary breath test to determine the alcohol content of the individual's breath (BrAC). The preliminary breath test is not an evidentiary test. However, the device has demonstrated the ability to obtain very accurate results when operated according to instructions. "The results of a preliminary breath test shall be used as a guide for the police officer in deciding whether an arrest should be made and may not be used as evidence by the State in any court action." [Maryland Transportation Article 16-205.2(c)]
- B. Drivers stopped for suspicion of ***driving under the influence/driving while impaired*** may be administered a preliminary breath test after being advised of their rights as described on the MSP 102, "Preliminary Breath Test Advisement of Rights Form."
- C. The preliminary breath test is administered ***after the Standardized Field Sobriety Tests but*** prior to arrest and the results will be used only as a guide when determining whether the

driver should be arrested for ***driving under the influence/driving while impaired*** or released. It is a screening device where probable cause for arrest has been established independently but the officer feels the independent evidence to be "borderline" and that other factors may be influencing the driver's behavior, i.e., fatigue, illness, etc. The preliminary breath test does not replace and is not a part of the establishment of probable cause for the arrest. The administration of the test is at the option of the stopping officer. Arrests can still be made without the test.

- D. The results of the preliminary breath test will be provided to:
 - 1. The driver suspected of drinking, who is released without arrest, prior to the driver's release, and
 - 2. The driver who is arrested after submission to or refusal of an evidentiary test (blood/breath).
- E. The results of the preliminary breath test may not be introduced by the prosecution as evidence or to support probable cause, but may be introduced by the defense.

III. Preliminary Breath Test Procedures

- A. Only the preliminary breath test (PBT) equipment approved by the Toxicologist, Office of the Chief Medical Examiner, shall be used. Current approved equipment is the Alco-Sensor, by Intoxi-meters, Inc.
- B. Only those persons authorized by the Toxicologist will be permitted to administer preliminary breath tests.
- C. The MSP 102 will be distributed by the testing officer as follows:
 - 1. The original will be retained by the stopping/arresting officer.
 - 2. One copy will be given to the suspect/defendant.
 - 3. One copy will be given to the preliminary breath test coordinator for the unit file.

- D. Testing officers will be responsible completing the MSP 104, "Preliminary Breath Test Log." The MSP 104 will be retained in the Preliminary Breath Test binder for one year and then placed in the *Alcohol Initiatives Unit* file for three years.

IV. Preliminary Breath Test Coordinator

The preliminary breath test coordinator of each station will be responsible for:

1. Verifying the information recorded in the Preliminary Breath Test Log by screening the MSP 102 forms.
2. Maintaining all MSP 102 forms.
3. Completing and forwarding the MSP 34A, "Alcohol Influence and PBT Use Summary Form," to the CTAU on a monthly basis.

V. Calibration Tests

- A. Each preliminary breath test device used to test drivers suspected of drinking will be checked **for accuracy** by any approved operator at least once per calendar month. The calibration of a PBT unit may be checked more frequently at the operator's option.
- B. The results of this test must be recorded in the Preliminary Breath Test Log by the operator.
- C. The results of this test must be between **0.07 - 0.09** grams of alcohol per 210 liters of breath. PBTs that do not test within these parameters must be withdrawn from service until recalibrated to **0.08** grams of alcohol per 210 liters of breath. Calibration and repairs of PBTs will be made only by those persons trained and approved to PBT devices. After recalibration, the results must be recorded in the Preliminary Breath Test Log.

VII. Issuance of PBTs

- A. *Upon completion of the Alcohol Enforcement Specialists (AES) school, each officer will be eligible to receive a PBT. Officers will retain their PBT as they move throughout the department but within FSB (PBTs are issued to individual officers, not units/stations). Once an officer leaves an FSB position or does not maintain Alcohol Enforcement Specialist certification, the PBT will be returned to the CTAU for reassignment. If an AES officer*

rejoins FSB from another bureau, they will contact the CTAU officer for issuance of a PBT.

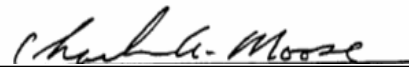
- B. *Only AES officers and Drug Recognition Expert (DRE) officers are assigned PBTs.*

- C. *The CTAU officer will conduct periodic reviews of the breath test log to determine usage/adherence to policy for possible reassignment of the PBT.*

VII. Proponent Unit: Alcohol Initiatives Unit

VIII. Cancellation

This directive cancels Function Code 516, effective date 05-27-99.



Charles A. Moose, Ph.D.
Chief of Police